

REMARKS

Claims 15, 20-25, 31-41, 49, 50, 52, 54-58 are currently pending in the present application. Of these claims 15, 20, 49, 54 and 57 are amended. Applicant greatly acknowledges the indication of allowably subject matter in claims 15 and 31-34. Applicant believes that these claims have been rewritten so as to be in allowable form.

CLAIM REJECTIONS - 35 USC § 112

Claim 15 has been rejected as being indefinite under 35 USC §112, second paragraph. The Examiner states:

Claim 15 recites the means for holding a piece of tubing in the support member comprising the channel having at least a semi-circular cross section, i.e., semi-circular or greater, but then state with adhesive being used if the cross section is not of a greater than semi-circular cross section. This is indefinite because there would not be a time when the cross-section is not of a greater than semi-circular, since the channel has previously been recited as being at least semi-circular.

The Examiner's rejection is not understood. Something that has at least a semi-circular cross-section, as defined in the specification of the present application, can have a semi-circular cross-section. As such, there certainly would be a time when the cross-section would be of a semi-circular cross-section. It is believed that the Examiner in making his rejection is assuming that the channel can be of a smaller than semi-circular cross-section. Applicant respectfully submits that the claim, as interpreted by the specification, only allows for semi-circular or greater cross-section. In order to clarify the claim and remove the perceived indefiniteness, Applicant has

amended the last term of the claim to read as follows:

a means for holding a piece of tubing in the support member,  
the means comprising the channel having at least a semi-  
circular cross-section, with adhesive being used if the cross-  
section is of a substantially semi-circular cross-section.

Support for the addition of the term "substantially" is found on page 15 of the  
specification in regard to the description of Fig. 3. It is believed that the amendment to  
claim 15 places it in allowable condition.

#### CLAIM REJECTIONS – 35 USC §102

Claims 21-23, 25 and 35-41 are rejected as being obvious in view of U.S.  
Patent No. 5,916,199 to Miles. It is believed that this rejection should have been to  
claims 20-23, 25, and 35-41 as the Examiner has not mentioned claim 20 as being  
allowable. At page 3, line 5, the Examiner mentions claim 20. Therefore, the  
response to the Office Action is being made as if the rejection is also of claim 20.

The Examiner states:

The patent to Miles discloses a tubing device comprising a  
tube support, figs. 2 and 2A, comprising a curvilinear channel  
(60) disposed therein for receiving a piece of tubing (20) and  
means for holding the piece of tubing in the channel wherein  
the tube support comprises a first portion (50) and a second  
portion (52), with the first and second portions being  
connected by a hinge, as recited in claim 20.

Claim 20 has been amended to require the curvilinear channel to be of a substantially circular cross-section, as at least shown in Figs. 10, 12, and 13, and as supported by page 20, lines 2-3, which state "the two together will form a circular or substantially circular channel or passageway 56...". While Miles shows a curvilinear channel, Miles does not show a curvilinear channel of substantially circular cross-section and therefore, claims 20-23, 25, 35-41, and any claims depending thereon, are allowable.

The Examiner next rejects claims 49, 50, 52 and 56-58 as being anticipated by U.S. Patent No. 5,890,684 to Stewart et al. The Examiner states:

The patent to Stewart et al. discloses a tubing apparatus comprising a support member, wherein the support member is a solid rectangular block (12), at least two parallel channels (30, 34) through the solid rectangular block for retaining tubing and structure, including third opening (38) and bolt (40) to support the weight of the tubing apparatus without substantially deforming the tubing retained by the support member, as recited in claims 49 and 50.

The patent to Stewart uses a substantially similar construction to that claimed for securing a strand of cable to an object. As such, Stewart '684 is non-analogous art, and would not be looked to by one attempting to solve the problem of supplying a weight-bearing apparatus for intravenous tubing. Stranded cable is not tubing. In addition, claim 49 has been amended to require a single piece of flexible tubing in combination with the construction previously claimed. Since everything must be shown within the four corners of a reference for it to be used in an "anticipation" rejection, and

Stewart does not show the flexible tubing, the claim is now allowable. Likewise, the claims depending on claim 49 are allowable.

Lastly, claims 54 and 55 are rejected as being anticipated by U.S. Patent No. 6,311,936 to Herr et al. The Examiner states:

The patent to Herr et al. discloses a flexible support member, fig. 8, (60), which has a pair of channels formed proximate the ends of the flexible support member, as recited claim 54, and fig. 9 discloses structure to support the weight of the tubing apparatus (66) comprises a curved portion (64) of the flexible support member between the two channels, as recited in claim 55.

Claim 55 has been cancelled, rendering this rejection moot as to claim 55. With regard to claim 54, this claim has been amended to require that the structure to support the weight of the tubing device comprises a curved portion of the flexible support member between the channels.

It is respectfully submitted that the Examiner misinterprets Figs. 8 and 9. The Examiner has stated that structure to support the weight of the tubing apparatus comprises the curved portion 64. As stated at column 3, lines 5-18:

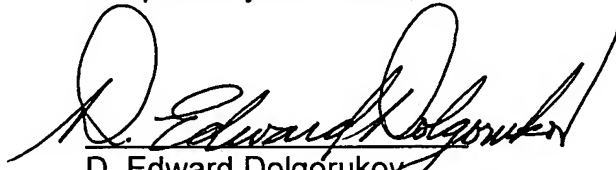
The retainer 60 further includes a tab end 70 having side portions 64 which is then folded over within the gooseneck of the hose 66 and then the hose 66 is threaded through the ring 68. The tab end 70 prevents the hose from being accidentally removed from the retainer 60.

This portion of the specification goes on to say, "a tab 72 is provided on the retainer 60 for receipt in the slot 34 on the back wall of the washing machine 32."

Thus it is not the tab end 70 on the side portion 64 which supports the device but the tab 72. In either case, since it is now required that the structure to support the weight of the tubing device be between the channels, claim 54 distinguishes over Herr et al., U.S. Patent No. 6,311,936.

In view of the above amendments, and the remarks explanatory thereof, a favorable reconsideration of the present application, and the passing of this case to issue, is courteously solicited. If for some reason the Examiner feels the claims are still not allowable, or wishes to discuss some change in language, a telephone interview with the undersigned attorney of record is invited.

Respectfully submitted,



D. Edward Dolgorukov  
Registration No. 26,286

ATTORNEYS  
Marshall & Melhorn, LLC  
Four SeaGate, Eighth Floor  
Toledo, OH 43604  
(419) 249-7146  
(419) 249-7151 (Facsimile)  
[Dolgorukov@marshall-melhorn.com](mailto:Dolgorukov@marshall-melhorn.com)